

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DALE E. BOEWE,) NO. ED CV 08-755-AG(E)
Plaintiff,)
v.) MEMORANDUM AND ORDER DISMISSING
DR. HILL, et al.,) COMPLAINT WITH LEAVE TO AMEND
Defendants.)

)

For the reasons discussed below, the Complaint is dismissed with leave to amend. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b)(1).

BACKGROUND

Plaintiff, a state prisoner incarcerated at the California Institution for Men ("CIM"), brings this civil rights action pursuant to 42 U.S.C. section 1983 against prison officials at CIM and the California State Prison at Lancaster ("Lancaster") and a California deputy attorney general. The CIM Defendants are: (1) podiatrist Dr. Hill; (2) podiatrist Dr. Gahly; (3) the Chief Medical Officer;

1 (4) Sergeant Sharp, a receiving and release sergeant; (5) correctional
2 counselor J. Y. Felix; (6) appeals coordinator B. Leymaster; (7) trust
3 account officer C. Dale; and (8) correctional lieutenant Sams. The
4 Lancaster Defendants are: (1) Dr. Alleyne; (2) the custodian of
5 medical records; and (3) an unidentified receiving and release
6 sergeant. Plaintiff also sues deputy attorney general Charles
7 Antonen. Plaintiff sues all Defendants in their official and
8 individual capacities.

9

10 The Complaint is somewhat disorganized. It does not always
11 clearly allege what incident occurred at which prison or what each
12 Defendant allegedly did or failed to do. The chronology of events is
13 also difficult to follow. It appears that Plaintiff allegedly suffers
14 from foot problems, including plantar fascitis, for which Plaintiff
15 assertedly received medical treatment prior to his incarceration
16 (Complaint, pp. 5-6). Plaintiff's outside doctor allegedly told
17 Plaintiff that Plaintiff should not walk without orthotics and
18 orthopedic shoes, and that doing so could cause Plaintiff to tear the
19 tendons in his feet (Complaint, p. 5).

20

21 Plaintiff was housed at Lancaster from approximately March 2007
22 through May 2007 (Complaint, p. 7). When Plaintiff first arrived at
23 Lancaster, Plaintiff allegedly had orthotics previously prescribed by
24 an outside doctor, for which Plaintiff assertedly had paid \$450
25 (Complaint, p. 9). The Lancaster receiving and release sergeant
26 allegedly took Plaintiff's orthotics and threw them in the trash in
27 front of Plaintiff (Complaint, p. 9). Plaintiff allegedly began
28 requesting orthotics and orthopedic shoes on or about March 7, 2007

1 (Complaint, p. 5). Plaintiff allegedly told "medical staff" that
2 Plaintiff was in extreme pain and needed orthotics and orthopedic
3 shoes (Complaint, p. 7). An unidentified doctor and unidentified
4 medical staff allegedly told Plaintiff that they had no resources and
5 that Plaintiff would have to wait until he was transferred out of
6 Lancaster to receive the medical assistance Plaintiff assertedly
7 needed (Complaint, p. 7). Plaintiff allegedly had no crutches or cane
8 while at Lancaster, assertedly causing Plaintiff to fall and suffer
9 serious injuries (Complaint, p. 7). The doctor and medical staff
10 allegedly told Plaintiff that Plaintiff would have to wait until he
11 transferred to receive medical assistance (Complaint, p. 7). A
12 Lancaster doctor allegedly denied Plaintiff x-rays, but ordered
13 crutches for Plaintiff which Plaintiff assertedly never received
14 (Complaint, p. 7). After approximately three months without crutches,
15 the doctor assertedly told Plaintiff to turn in the crutches, and
16 Plaintiff, allegedly still in excruciating pain, assertedly responded
17 that he had never received the crutches (Complaint, p. 7). That day,
18 a nurse allegedly told Plaintiff that there were no medical supplies
19 at Lancaster and that the custodian of records had given instructions
20 to "toss out a lot of papers from the medical files" (Complaint,
21 pp. 7-8).¹

22
23 While at CIM, Plaintiff allegedly obtained orthotics at his own
24 expense (Complaint, p. 10). Although Plaintiff allegedly had a
25 doctor's order for the orthotics, Defendant Sergeant Sharp assertedly
26

27 ¹ It is unclear whether Plaintiff alleges that his files
28 were among those "tossed," and who Plaintiff contends "tossed"
the files.

1 sent the orthotics back to the sender twice (Complaint, p. 10). The
2 third time Plaintiff allegedly received an empty envelope which
3 reportedly had contained orthotics when sent (Complaint, pp. 10-11).
4

5 On October 14, 2007, Plaintiff allegedly saw Dr. Galhly, who
6 assertedly told Plaintiff that there was no money or facility for
7 therapy, and said he could do nothing for Plaintiff (Complaint,
8 p. 11). Plaintiff later allegedly observed other inmates receiving
9 physical therapy (Complaint, p. 11). Dr. Galhly allegedly denied
10 Plaintiff's request for a wheelchair, saying that inmates with no legs
11 were waiting for wheelchairs (Complaint, p. 11). Dr. Galhly allegedly
12 refused to look at Plaintiff's medical records, refused to order
13 x-rays, denied Plaintiff's request for MRIs, and falsely stated that
14 the California Department of Corrections and Rehabilitation did not
15 provide orthotics (Complaint, p. 12). Dr. Galhly allegedly
16 intentionally disregarded Plaintiff's complaints of pain (Complaint,
17 p. 23).

18
19 Plaintiff alleges that, on November 27, 2007, a CIM nurse told
20 Plaintiff that there was no podiatrist at CIM any longer (Complaint,
21 p. 8). Plaintiff alleges that the Chief Medical Officer delayed
22 hiring a podiatrist, and hires staff who will not spend prison money
23 for treatment of prisoners (Complaint, p. 8). The absence of a
24 podiatrist allegedly delayed Plaintiff's treatment, which assertedly
25 caused injuries to Plaintiff's feet and caused Plaintiff to become so
26 depressed, panicky and suicidal that Plaintiff reportedly was
27 compelled to see a psychiatrist (Complaint, p. 8).
28 ///

1 On one occasion, apparently at CIM, Plaintiff was scheduled to
2 see the doctor on duty, although no doctor was on duty that day
3 (Complaint, p. 9). The Chief Medical Officer allegedly did nothing to
4 correct this asserted "illegality" (Complaint, p. 9).

5

6 On or about February 8, 2008, Plaintiff allegedly saw Dr. Hill
7 (Complaint, p. 4). Plaintiff allegedly tried to explain that
8 Plaintiff had gone through a year of intense outside therapy for his
9 feet, that Plaintiff needed orthotics and orthopedic shoes, and that
10 Plaintiff was in extreme pain (Complaint, pp. 4-5). Dr. Hill
11 allegedly did nothing other than to tell the nurses how drunk he
12 (Dr. Hill) had been (Complaint, p. 4). Dr. Hill allegedly refused to
13 look at Plaintiff's prior medical records, assertedly falsely stating
14 it was against policy to do so (Complaint, p. 5). Dr. Hill allegedly
15 falsely told Plaintiff that it was impossible to get orthotics at CIM
16 or within the California prison system (Complaint, p. 5).

17

18 On April 2, 2008, Plaintiff allegedly appeared at a
19 classification committee hearing at which Plaintiff assertedly said he
20 was in poor health and extreme pain due to his foot condition
21 (Complaint, p. 12). Plaintiff alleges that in the initial committee
22 report Defendant Felix recorded falsely that Plaintiff told the
23 committee Plaintiff's health was good, assertedly in violation of
24 state regulations (Complaint, pp. 12-13). The committee allegedly
25 assigned Plaintiff to the kitchen, although the committee assertedly
26 knew about Plaintiff's condition, his involvement in the Americans
27 with Disabilities Act program and his use of crutches (Complaint,
28 p. 13). The committee allegedly disregarded a medical "chrono" which

1 assertedly restricted Plaintiff to a "sitting type of job" (Complaint,
2 p. 14). Although the classification committee report allegedly was
3 corrected subsequently to show that Plaintiff told the Committee his
4 health was poor, Defendant Felix allegedly retained Plaintiff on full
5 duty in the kitchen, where Plaintiff assertedly was required to stand
6 for hours, reportedly causing permanent injury to Plaintiff's feet
7 (Complaint, pp. 13-14).

8

9 The CIM appeals coordinator allegedly rejected seven appeals
10 Plaintiff filed or tried to file, thereby assertedly violating
11 Plaintiff's First Amendment right to redress of grievances (Complaint,
12 pp. 14-18, 20).² Defendant Sams allegedly intentionally disregarded
13 Plaintiff's appeal requesting the orthotics sent to Plaintiff
14 (Complaint, pp. 18-19).

15
16 Defendant trust account officer allegedly took money out of
17 Plaintiff's trust account for restitution, although Plaintiff already
18 had completed his restitution payments (Complaint, p. 19). The
19 appeals coordinator allegedly rejected Plaintiff's appeal concerning
20 this issue on the ground that Plaintiff made inappropriate comments on
21 the appeal (Complaint, p. 19).

22

23 Plaintiff generally contends Defendants violated Plaintiff's
24 rights to medical care, his right to property, his right of access to
25 the courts, his right to redress of grievances, his right to due
26

27 ² However, the Complaint lists and attaches copies of
28 more than seven appeals which Plaintiff allegedly filed or
attempted to file (Complaint, pp. 14-18).

1 process, his Eighth Amendment right to be free from cruel and unusual
2 punishment, and his right to freedom of speech (Complaint, p. 4).
3 These claims, however, are not contained in separately pleaded claims
4 for relief. Plaintiff seeks compensatory damages in the sum of
5 \$21,000 and punitive damages in the sum of \$63,300 (Complaint, p. 23).
6 Plaintiff also seeks an injunction preventing Defendants "from denying
7 medical care," "from throwing away property," "from taking funds
8 illegally," and "from throwing away criminal records."
9

10 DISCUSSION

11

12 I. Plaintiff May Not Sue State Officials for Damages in Their 13 Official Capacities.

14

15 Plaintiff may not sue Defendant state officials for damages in
16 their official capacities. The Eleventh Amendment bars suits for
17 damages against state officials in their official capacities. See
18 Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989);
19 Romano v. Bible, 169 F.3d 1182, 1185 (9th Cir. 1999), cert. denied,
20 528 U.S. 816 (1999).

21

22 II. Allegations of Random and Unauthorized Property Deprivations Do 23 Not State a Constitutional Claim for Relief.

24

25 To the extent Plaintiff alleges a Defendant or Defendants took or
26 threw away Plaintiff's property or took money from Plaintiff's trust
27 account without authorization, the Complaint alleges no cognizable
28 constitutional claim for relief. A random and unauthorized property

1 deprivation does not constitute a denial of due process if state law
2 provides an adequate post-deprivation remedy. Hudson v. Palmer, 468
3 U.S. 517, 533 (1984). California law provides an adequate
4 post-deprivation remedy for random and unauthorized property
5 deprivations. See Barnett v. Centoni, 31 F.3d 813, 817 (9th Cir.
6 1994).

7

8 **III. The Complaint Fails to Identify Clearly the Claims Against Each**
9 **Defendant.**

10

11 Under Rule 8(a) of the Federal Rules of Civil Procedure, a
12 complaint must contain a "short and plain" statement of the claim for
13 relief. "Each averment of a pleading shall be simple, concise, and
14 direct." Fed. R. Civ. P. 8(e).

15

16 The Complaint consists of a lengthy narrative, and does not set
17 forth separately each of Plaintiff's claims or clearly identify which
18 Defendant is sued on which claim. Plaintiff mentions unnamed doctors,
19 "medical staff" and committee members without identifying many of
20 those persons or indicating whether those persons are Defendants. A
21 complaint is subject to dismissal if one cannot determine from the
22 complaint who is being sued, and for what relief. McHenry v. Renne,
23 84 F.3d 1172, 1178 (9th Cir. 1996).

24

25 Moreover, an individual defendant is not liable on a civil rights
26 claim unless the facts establish the defendant's personal involvement
27 in the constitutional deprivation or a causal connection between the
28 defendant's wrongful conduct and the alleged constitutional

1 deprivation. See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989);
 2 Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). To state a
 3 claim against any individual defendant, a plaintiff must allege facts
 4 showing that the individual defendant participated in or directed the
 5 alleged violation, or knew of the violation and failed to act to
 6 prevent it. See Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir.
 7 1998), cert. denied, 525 U.S. 1154 (1999) ("A plaintiff must allege
 8 facts, not simply conclusions, that show that an individual was
 9 personally involved in the deprivation of his civil rights."); Taylor
 10 v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff's vague
 11 allegations that unidentified doctors, "medical staff" members,
 12 committee members or other unidentified prison officials generally
 13 violated Plaintiff's rights do not suffice under these standards. See
 14 Barren v. Harrington, 152 F.3d at 1194.³

15

16 **IV. The Complaint Fails to Allege an Unconstitutional Denial of**
 17 **Access to the Courts.**

18

19 A prisoner claiming a violation of his right of access to the
 20 courts must demonstrate that he has standing to bring the claim by
 21 showing the defendant's actions caused the prisoner to suffer "actual

22

23 ³ Plaintiff has failed to identify certain Defendants by
 24 name. A plaintiff may sue a fictitious defendant if the
 25 plaintiff does not know the true identity of the defendant prior
 26 to the filing of the complaint. Wakefield v. Thompson, 177 F.3d
 27 1160, 1163 (9th Cir. 1999). However, before the Court can order
 28 service of process by the United States Marshal upon any
 fictitious Defendant, Plaintiff must provide identifying
 information sufficient to permit the United States Marshal to
 effect service of process upon the Defendant, such as the
 Defendant's full name, rank (if any) and address.

1 injury" in pursuit of either a direct or collateral attack upon a
 2 conviction or sentence or a challenge to the conditions of
 3 confinement. Lewis v. Casey, 518 U.S. 343, 349 (1996). Under Lewis
 4 v. Casey, a prisoner must show that an action was "lost or rejected,"
 5 or that presentation of a non-frivolous claim was or is being
 6 prevented, as a result of the alleged denial of access. Id. at 356.
 7 Actual injury is not demonstrated by the simple fact that a prisoner
 8 is "subject to a governmental institution that was not organized or
 9 managed properly." Id. at 350. Plaintiff does not plead he suffered
 10 any "actual injury" within the meaning of Lewis v. Casey.

11

12 **V. Prison Officials' Failure to Respond to Grievances Does Not**
 13 **Violate the Constitution.**

14

15 To the extent that Plaintiff alleges prison officials refused to
 16 respond to grievances, the Complaint is insufficient. While prisoners
 17 may enjoy a First Amendment right to file jail grievances, see Rhodes
 18 v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005), prisoners have no
 19 "separate constitutional entitlement to a specific prison grievance
 20 procedure." See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003),
 21 cert. denied, 541 U.S. 1063 (2004) (citation omitted). The failure of
 22 prison officials to respond to or process a particular grievance does
 23 not violate the Constitution. See Flick v. Alba, 932 F.2d 728, 729
 24 (8th Cir. 1991); Teahan v. Wilhelm, 481 F. Supp. 2d 1115, 1120-21
 25 (S.D. Cal. 2007) (rejecting claim that failure to use certain
 26 procedures in processing grievance violated First Amendment, citing,
 27 inter alia, Ramirez v. Galaza, supra); Morris v. Newland, 2007 WL
 28 707525, at *7 (E.D. Cal. March 6, 2007), adopted, 2007 WL 987846 (E.D.

1 Cal. March 30, 2007) ("a failure to process a grievance does not state
 2 a constitutional violation") (citation omitted); Alonzo v. Squyres,
 3 2002 WL 1880736 (N.D. Cal. Aug. 9, 2002) ("Although there certainly is
 4 a right to petition the government for redress of grievances (a First
 5 Amendment right), there is no right to a response or any particular
 6 action.") (citations omitted); see also Baltoski v. Pretorius, 291 F.
 7 Supp. 2d 807, 811 (N.D. Ind. 2003) ("[t]he right to petition the
 8 government for redress of grievances, however, does not guarantee a
 9 favorable response, or indeed any response, from state officials").

10

11 **VI. Plaintiff's Claims that Prison Officials Violated State Law or**
 12 **State Prison Regulations Do Not State a Cognizable Claim for**
 13 **Relief Under 42 U.S.C. Section 1983.**

14

15 It is axiomatic that, to state a claim under 42 U.S.C. section
 16 1983, the plaintiff must allege a violation of a right secured by the
 17 constitution or federal law. Parratt v. Taylor, 451 U.S. 527, 535
 18 (1982), overruled on other grounds, Daniels v. Williams, 474 U.S. 327
 19 (1986); Haygood v. Younger, 769 F.2d 1350, 1353 (9th Cir. 1985), cert.
 20 denied, 478 U.S. 1020 (1986). Mere allegations of state law
 21 violations do not suffice to plead a section 1983 claim. See Galen v.
 22 County of Los Angeles, 477 F.3d 652 (9th Cir. 2007) ("Section 1983
 23 requires Galen to demonstrate a violation of federal law, not state
 24 law. [citation]."); Lowell v. Poway Unif. Sch. Dist., 90 F.3d 367,
 25 370-71 (9th Cir. 1996) ("To the extent that the violation of a state
 26 law amounts to the deprivation of a state-created interest that
 27 reaches beyond that guaranteed by the federal Constitution, Section
 28 1983 offers no redress"; citation omitted). Plaintiff's allegations

1 that Defendants violated state law and prison regulations fail to
2 state a claim for relief pursuant to 42 U.S.C. section 1983.
3

4 **VII. Plaintiff May Not Seek Injunctive Relief Against Lancaster Prison**
5 **Officials.**

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7 Because Plaintiff evidently no longer is incarcerated at
8 Lancaster, Plaintiff's claims for injunctive relief against Lancaster
9 prison officials are moot. See Dilley v. Gunn, 64 F.3d 1365, 1368-
10 1369 (9th Cir. 1995).

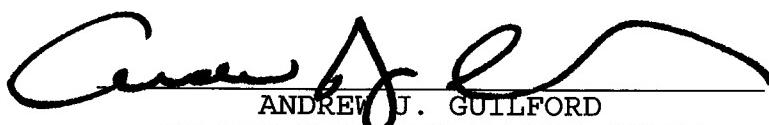
11
12 **CONCLUSION**
13

14 For all of the foregoing reasons, the Complaint is dismissed with
15 leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.
16 2000) (en banc); 28 U.S.C. § 1915(e)(2)(B), § 1915A(b). If Plaintiff
17 still wishes to pursue this action, he is granted thirty (30) days
18 from the date of this Memorandum and Order within which to file a
19 First Amended Complaint. The First Amended Complaint shall be
20 complete in itself. It shall not refer in any manner to any prior
21 complaint. See Fed. R. Civ. P. 21. Plaintiff shall set forth his
22 claims for relief separately and shall identify each Defendant sued on
23 each claim for relief. See Fed. R. Civ. P. 10(a), (b). Failure to

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1 file timely a First Amended Complaint may result in the dismissal of
2 this action.

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4 DATED: JULY 26, 2008.
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7 
8 ANDREW J. GUILFORD
UNITED STATES DISTRICT JUDGE
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12 Presented this 20th day of
13 June, 2008 by:

14 
15 CHARLES F. EICK
16 UNITED STATES MAGISTRATE JUDGE
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